

SECOND REGULAR SESSION

SENATE BILL NO. 916

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR DOUGHERTY.

Pre-filed December 3, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

2862S.01I

AN ACT

To repeal section 547.037, RSMo, and to enact in lieu thereof one new section relating to compensation for those released from the department of corrections after post-conviction DNA testing, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 547.037, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 547.037, to read as follows:

547.037. 1. If testing ordered pursuant to section 547.035 demonstrates a person's innocence of the crime for which the person is in custody, a motion for release may be filed in the sentencing court.

2. The court shall issue to the prosecutor an order to show cause why the motion should not be granted. The prosecutor shall file a response consenting to or opposing the motion.

3. If the prosecutor consents to the motion and if the court finds that such testing demonstrates the movant's innocence of the crime for which he or she is in custody, the court shall order the movant's release from the sentence for the crime for which testing occurred.

4. If the prosecutor files a response opposing the movant's release, the court shall conduct a hearing. If a hearing is ordered, the public defender shall be appointed to represent the movant if the movant is indigent. The hearing shall be on the record. The movant shall have the burden of proving the allegations of the motion by a preponderance of the evidence.

5. If the court finds that the testing ordered pursuant to section 547.035 demonstrates the movant's innocence of the crime for which he or she is in custody, the court shall order the movant's release from the sentence for the crime for which the testing occurred. Otherwise, relief shall be denied the movant.

6. The court shall issue findings of fact and conclusions of law whether or not a hearing is held. An appeal may be taken from the court's findings and conclusions as in

other civil cases.

7. Any person who is adjudicated innocent, as provided in subsection 8 of this section shall have a cause of action against the state for wrongful imprisonment. Such action must be filed within one year of the person's release from the department of corrections.

8. For the purposes of this section, a person is adjudicated innocent if all of the following factors have been met:

(1) Testing ordered pursuant to Section 547.035 demonstrates a person's innocence of the crime for which the person is in custody;

(2) An order of release has been entered by the court; and

(3) All appeals have been exhausted.

9. A person who is adjudicated innocent shall receive compensation for both economic and non-economic injuries. For the purposes of this subsection, economic injury means the loss of employment income caused by the person's wrongful imprisonment. Economic injury shall be the aggregate of the person's compensation for each year of incarceration based annually on the federal poverty level as defined by section 215.345, RSMo, plus twenty percent. For one purpose of this subsection, non-economic injury means the loss of civil rights and the emotional duress resulting from wrongful incarceration. Such damages shall not be compensated monetarily. Non-economic injury shall be compensated by the state paying the costs of job-skills training, therapy or similar treatment, or other social or educational programs as desired by the person. Payment shall be made only upon the receipt by the state department of corrections of the bills for the job-skills training, therapy or similar treatment, or other social or educational programs attended by the person. False statements in the filing of such bills shall be considered a false statement and punished as a class A misdemeanor.

10. If the results of the DNA testing confirm the person's guilt, then the person filing for DNA testing under section 547.035 shall:

(1) Be liable for any reasonable costs incurred when conducting the DNA test, including but not limited to the cost of the test. Such costs shall be determined by the court and shall be included in the findings of fact and conclusions of law made by the court pursuant to subsection 6 of this section; and

(2) Be sanctioned according to section 217.262, RSMo.